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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,711	08/20/2003	Antony Keith Van Dyk	TJK/410	6116
27717	7590	02/24/2005	EXAMINER	
SEYFARTH SHAW 55 EAST MONROE STREET SUITE 4200 CHICAGO, IL 60603-5803			NORDMEYER, PATRICIA L	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/644,711	Applicant(s) VAN DYK ET AL.	
	Examiner Patricia L. Nordmeyer	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 88-105 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 88-105 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 88 – 91, 93 – 95, 98, 99, 104 and 105 are rejected under 35 U.S.C. 102(b) as being anticipated by Allbrighton (GB 2,306,429 A).

Allbrighton discloses placing a formulation in a container having an internal surface and external surface adapted to contain the formulation and its related vapors (Figure 8, #31 and Page 3, lines 22 – 24), a formulation prone to skinning, in a tin (Page 1, lines 2 – 7), wherein the formulation vapor is retained within the container in contact with the formulation by spacing the sealing means away from the surface of the paint while be located on an internal surface (Abstract, lines 2 – 3 and Figure 8) and used during storing and transporting the container (Page 1, lines 19 – 21) as in claims 88 and 90. With regard to claims 91 and 93, air from the outside environment is prevented from contacting the surface of the paint (Page 1, lines 28 – 31) due to the fact that the sealing means with anti-skinning layer covering the entire surface area of the internal surface is contact with a portion of the inner surface of the can (Figure 8 and Page 2, lines 25 - 27), thereby maintaining the concentration of the formulation retained on the anti-skinning layer as stated in claims 95 and 104. The formulation in the tin is a solvent based gloss paint or any other item which would form a skin on the surface due to the loss of solvent (Page 1,

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lines 17 – 18 and Page 2, lines 13 – 18) as in claims 89 and 94. With regard to claims 98 and 99, the disc is formed with a foam lining (Page 3, lines 3 – 6 and Page 6, lines 3 – 12), providing insulation from the outside air. The disc is removed to use the paint in the can and is placed back into the container when the paint use is finished, thereby making it a releasable lid (Page 2, lines 19 – 29) as stated in claim 105.

3. Claims 88 – 91, 93 – 96, 104 and 105 are rejected under 35 U.S.C. 102(b) as being anticipated by Graham et al. (USPN 4,691,838).

Graham et al. disclose placing the formulation in a container having an internal surface and an external surface adapted to contain the formulation and its related vapors (Column 1, lines 40 – 45), wherein the container includes a anti-skinning layer, moist pad in combination with a lid, which is located on a portion of the internal surface and is resealable, that prevents the formation of a skin on the surface of paint, a formulation prone to skinning in a tin (Column 5, lines 10 - 13) by preventing air from the outside environment from contacting the surface of the paint due to the fact that the membrane is contact with a portion of the inner surface of the can and the foil lid (Figure 1, #14 and 16) while being stored and transported (Column 5, lines 10 – 3) as stated in claims 88, 90 and 105. As in claims 91, 93, 95 and 103, the anti-skinning layer that is located entirely on an internal surface of the sealing means, (Figure 1, #14 and 16) while allowing the formulation vapors of the paint to gather in the perforations and maintain the concentration of the formulation (Figure 1, #17). With regard to claims 89 and 94, the formulation in the tin is a solvent based gloss paint or any other item which would form a skin on

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the surface due to the loss of solvent (Column 4, lines 54 – 55). The disc is removed to use the paint in the can and is placed back into the container when the paint use is finished (Column 4, lines 65 – 68). As can be seen by Figures 5 – 8, the membrane of the tray is chosen from a variety of different textures as stated in claim 96.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 97 and 100 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allbrighton (GB 2,306,429 A) in view of Merritt (USPN 5,305,909).

Allbrighton discloses an anti-skinning layer that prevents the formation of a skin on the surface of paint, a formulation prone to skinning, in a tin (Page 1, lines 2 – 7). However, Allbrighton fails to disclose the anti-skinning layer is constructed of gauze and the anti-skinning layer having a thickness of approximately 0.001 to 5 mm.

Merritt teaches a plastic bag having a thickness between 0.00025 and 0.03 inches (Column 3, lines 43 – 45) used in combination with a pusher element, a container sealing means, for the purpose of preventing the formation of a skin on the surface of paint in a tin (Column 2, lines 20 – 28) for the purpose of keeping air from the outside environment from contacting the

surface of the paint due to the fact that the membrane is contact with a portion of the inner surface of the can and the surface of the paint (Figure 3 and Column 2, lines 20 – 28) while allowing the formulation vapors of the paint to gather in the space between the bag and the side of the container (Figure 3, #30).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided anti-skinning layer having a thickness between 0.00025 and 0.03 inches in Allbrighton in order to prevent the formation of a skin on the surface of paint in a tin by keeping air from the outside environment from contacting the surface of the paint due to the fact that the membrane is contact with a portion of the inner surface of the can and the surface of the paint while allowing the formulation vapors of the paint to gather in the space between the bag and the side of the container.

Allbrighton discloses the claimed invention except for the material being gauze. It would have been obvious to one having ordinary skill in the art at the time the invention was made replace the foam layer in Allbrighton with one of made of gauze material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. MPEP 2144.07. The foam layer of Allbrighton performs an equivalent function to the claimed gauze material because it absorbs both the formulation and formulation vapors, as does the gauze material. Therefore, one of ordinary skill in the art would readily determine that the foam material performs an equivalent function to the gauze material depending on the desired end results and the absence of unexpected results.

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6. Claims 101 – 103 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allbrighton in view of Hamada et al. (USPN 4,347,948).

Allbrighton discloses the claimed the invention above except for the anti-skinning layer adhering to the internal surface of the container, being integrally molded to an internal surface of the container and the anti-skinning layer being thermally bonded to an internal surface of the container.

Hamada et al. teach either integrally molding or thermal bonding, adhering, a plastic sheet to the internal surface of the lid, sealing means, of a container (Column 4, lines 3 – 10 and Figure 2, #18) for the purpose of keeping air from the outside environment from contacting the surface of the paint due to the fact that the membrane by sealing the container so that it is air tight through contact with a portion of the inner surface of the can and the surface of the paint (Column 3, lines 64 – 68).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the sheet that is integrally molded or thermally bonded to an internal surface in Allbrighton in order to keep air from the outside environment from contacting the surface of the paint due to the fact that the membrane by sealing the container so that it is air tight through contact with a portion of the inner surface of the can and the surface of the paint as taught by Hamada et al.

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7. Claims 92 and 102 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allbrighton in view of Burke et al. (USPN 4,625,883).

Allbrighton discloses the claimed the invention above except for the anti-skinning layer adhering to an internal surface of the container and the container comprising a second anti-skinning layer that extends about at least a portion of an internal surface of the container.

Burke et al. teach in one embodiment two layers to help prevent air contact with the paint (Figure 1, #10 and 18) where the first layer of the sealing means sits in the grooves at the opening of the can (Figure 1, #18) while the second layer of the sealing means is in contact with the formulation below the circumferential lip of the container (Figure 1, #10), and in another embodiment of the invention, the anti-skinning layer is adhered to the container in connection with the lid, sealing means, (Column 2, lines 32 – 41 and Figures 4 and 5, #10c) for the purpose of preventing a skin layer from forming on the surface of paint or a similar product in a stored container by preventing air contact with the paint or similar product through contact with a portion of the inner surface of the can.

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the two layers of anti-skinning material and the grooves or adhering properties in Allbrighton in order to prevent a skin layer from forming on the surface of paint or a similar product in a stored container by preventing air contact with the paint or similar product through contact with a portion of the inner surface of the can as taught by Burke et al.

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Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571) 272-1496. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia L. Nordmeyer
Examiner
Art Unit 1772

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HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772 2/22/05